

**DANIEL TOWN COUNCIL MEETING MINUTES
MONDAY, FEBRUARY 7, 2022 AT 6:00 PM
WASATCH COUNTY SERVICES BUILDING
55 SOUTH 500 EAST, CONFERENCE ROOM B
HEBER CITY, UTAH 84032**

Quorum Present: Mayor Scott Kohler, Council members Robyn Pearson, Merry Duggin, and Jon Blotter. Planning Director Eric Bunker and Ryan Taylor of T-O Engineers (town engineer) were present, and clerk Lynne Shindurling to take the minutes.

Mayor Kohler called the meeting to order at 6:00 PM.

Members of the Public: Gary Weight, Pam Skinner, Eric Bennett, Ben Probst, John Glodowski, Stefanie Grady, Mick Kohler, Ryan and Amanda Simpson, Charli Brown, Bridger and Tausha Wilde, Lisa Dinga, Jeremy and Erin Charchenko, Barbara Norris, Jaq Shindurling, Doug Crittenden, Kim Crittenden, Rex and Karen Reeder and Victor Hanson.

1) PUBLIC COMMENT (PLEASE LIMIT COMMENTS TO 2 MINUTES PER PERSON)

Barbara Norris stated she would like to turn the Town Facebook page over to Lisa Dinga by adding her as an administrator. Lisa has about 10 years experience in the social media arena and is currently in charge of a neighborhood page for the Storm Haven area. Mrs. Norris asked if a notice could be included on the water bills regarding the existence of our Facebook page and enabling them to sign up for it.

Council member Blotter asked Lisa for thoughts on how many people in a small town like Daniel would possibly join Facebook. She stated perhaps at least 50% of the population would participate. Stefanie Grady commented that the old page in existence prior was not updated often enough so people quit looking to that as a source of information. Lisa said a calendar containing meeting dates and other announcements could serve as a resource to get more people involved. Council member Duggin volunteered to help with the page until a new clerk is hired to hopefully work with Lisa on this endeavor.

Council member Duggin then spoke of her recent encounter with the animal control agency of Heber City. She said Daniel has not opted to participate with any animal control office in the Heber Valley, nor paid any monies toward their support. The Daniel Municipal Code does have a section addressing this, and she

recommended to the residents present if they do have an occurrence involving Heber City's animal control office, to state they have no jurisdiction in Daniel Town.

At this point Eric Bunker stated he received news that Blaine Smith and Marilou Hall had passed away in the past week, both of whom held positions within the local government in the past.

2) BEN PROBST WITH PRESENTATION OF FY 2020-2021 AGREED UPON PROCEDURE

Mr. Probst, with the CPA firm of Gilbert & Stewart, submitted his Agreed Upon Procedure to the Council. The Town's revenues did not reach \$1 million, at which point a full audit of an entity is required. This procedure is performed annually to make sure Daniel Town is in compliance with state laws, rules, and requirements.

He reported that his review found that the general fund had overspent by \$109,000 and the water fund had overspent by \$30,000, which he attributed to improper reporting of CARES funds received and the lack of depreciation taken on assets and infrastructure. He mentioned the State Auditor's Office requires capitalization of assets and subsequent depreciation, most generally of any items over \$5,000.

Mr. Probst thanked Sherri Price and former clerk Mary Snyder for assisting in providing the needed documents to perform the Agreed Upon Procedure.

3) APPROVAL OF COUNCIL MEETING MINUTES OF JANUARY 3, 2022

Council member Pearson moved to approve the minutes of January 3, 2022, with a second by Council member Duggin. The vote was: Merry Duggin aye, Jon Blotter aye, Mayor Kohler aye, Robyn Pearson aye. The motion carried.

4) APPROVAL OF COUNCIL SPECIAL MEETING MINUTES OF JANUARY 19, 2022

Council member Duggin moved to approve the minutes of January 19, 2022, seconded by Council member Pearson. The vote was: Merry Duggin aye, Jon Blotter aye, Mayor Kohler age, Robyn Pearson aye. The motion carried.

5) APPROVAL OF JOINT COUNCIL AND PLANNING COMMISSION MEETING MINUTES OF JANUARY 19, 2022

Council member Pearson commented part of the items were discussed by the Planning Commission and asked about their approval by the Town Council. Clerk Lynne Shindurling stated the draft minutes would be supplied to the Commissioners and approved by them as well.

Council member Pearson moved to approve the minutes of the joint meeting of the Council and Planning Commission held on January 19, 2022, with a second from Council member Duggin. The vote was: Merry Duggin aye, Jon Blotter aye, Mayor Kohler aye, Robyn Pearson aye. The motion carried.

6) BUSINESS LICENSES:

a. NEW: Wiggle Wash and Walk LLC and Rafter K Construction.

Mayor Kohler stated his business is Rafter K, in which he serves as a contractor doing some residential and commercial building. He currently has one employee.

Charli Brown has submitted an application for a business license under the name Wiggle Wash and Walk, LLC. Council member Duggin asked if she would be doing any overnight kenneling of dogs. She said yes, with no more than eight at one time. Council member Duggin stated with that many animals she would need to obtain a kennel license and inquired of the Council if she would also need to have a conditional use permit.

Planning Director directed everyone's attention to DMC 8.04(111) Kennel in the definitions section, which listed three or more animals. Council member Duggin referred to Ordinance 2008-03-03G, which amended the number of animals to five. Ms. Brown stated she would limit the overnight number to five dogs, not counting her own. Director Bunker requested that that be noted on the business license issued for Wiggle Wash and Walk.

b. RENEWAL: Classic Beauty Supply, Tee J's Custom Mutt Cutts, Ostmann's Heating & Air, Givens Grooming LLC, Out West Accounting & Tax Service.

Council member Duggin asked if there were any complaints made against any of these businesses. Director Bunker and Mayor Kohler stated they had not received any.

Council member Duggin moved to approve the new licenses for Rafter K Construction and Wiggle Wash and Walk LLC, seconded by Council member Blotter.

Planning Director Bunker asked Ms. Duggin to amend the motion to include the restriction of five dogs at any one time.

Council member Duggin amended her motion to include the restriction on the Wiggle Wash and Walk business. Council member Blotter said the second stands. The vote was: Merry Duggin aye, Jon Blotter aye, Mayor Kohler aye, Robyn Pearson aye. The motion passed.

Council member Duggin moved to approve the renewal license for businesses Classic Beauty Supply, Tee J's Custom Mutt Cutts, Ostmann's Heating & Air, Givens Grooming LLC, and Out West Accounting & Tax Service. The motion was seconded by Council member Blotter. The vote was: Merry Duggin aye, Jon Blotter aye, Mayor Kohler aye, Robyn Pearson aye. The motion carried.

7) PRESENTATION BY REX REEDER

Mr. Reeder stated he and his wife, Karen, are working together after receiving a letter by certified mail from the Town of Daniel dated December 8, 2021, and received by them December 13, 2021, stating they are to remove a fence and three trees from the west side of their property by February 9, 2022, or face consequences of a \$650 fine per offense and imprisonment of 90 days, and pay an additional \$750 fine, signed by Eric Bunker, Daniel Town Nuisance Inspector.

He stated after serving tours of duty in Viet Nam, Bosnia, and Desert Storm, he worked in Presidio/San Francisco in an earthquake reaction center. His work there was with the California National Guard, and one of his assignments involved restorations and rescues after natural disasters such as earthquakes occurred. He was in California in 1989 at the time the earthquake struck Loma Prieta during the World Series games. When the shaking ceased after the quake, he and his team heard explosions happening throughout the area. He stated part of the cause was bundles of electricity, gas, and waterlines placed in close proximity to each other in the easements going into many of the buildings.

His opinion is the waterline and the gas line in the easement in front of his home are placed too close together. He stated because the gas line was on the east side of the road, and overhead power lines above, the waterline should have been placed on the west side of the road.

He does agree that his fence should be moved, but only a matter of two feet according to his measurements. He and Karen produced an aerial photo of the area taken in May of 2018. He pointed out on it the willow tree, which has been there for more than 60 years, and the two spruce trees at the end of his driveway are right on the line, in his opinion.

Karen Reeder then read from a statement prepared by Marsha Birch stating the willow tree had been there at least 60 years. Rex Reeder feels the willow tree is grandfathered in because of the time it has existed there. He also would like a cement culvert that's near the willow tree removed at the same time the fence is moved.

He proposes that Daniel Town move the culinary waterline they put in because it is too close to the gas line. He said he watched the construction as the line was placed in the trench. Now that it's winter you cannot see the location of any of the lines in the ground. He stated he is more than willing to move the fence back in the spring when the ground is no longer frozen. He would like Daniel Irrigation to remove the culvert at the same time, as well as Daniel Town straightening out the culinary waterline so it is not so close to the gas line. His opinion is if left in its current position, there could be electrical charges and gas charges produced if an earthquake were to take place causing an explosion, and he would like to see that potential eliminated by moving the waterline.

Council member Blotter commented he does not believe anyone wants to see him in jail, that there is a long history leading up to the current situation. He said when the waterline was going to be placed, Daniel Town offered to pay for moving his fence to better access the easement on the east side of Southfield Road. Mr. Reeder opted out of that arrangement. Mr. Blotter stated Daniel Town did try to work with him on the issue, but they were forced to place the waterline beside the existing fence as it stood at the time. He asked Mr. Reeder what evidence he has that the waterline is too close to the electrical and gas lines in the ground, if he's relying on written standards within the industry.

Ryan Taylor stated each utility company has standards they like to follow, such as gas lines having three feet of separation in all directions, but at times there are variances when the right-of-way does not allow enough room. Upon further questioning, Mr. Taylor stated the waterline is five or six feet deep, moved to one side of the trench, and the gas line was up two and a half or three feet on the other side of the trench. Mr. Reeder would like to open the trench at the time the willow tree is removed where one can see the distance

between the lines and rebury them in conformance with the industry standards. He produced a document from Heber Light & Power saying they need an easement on the ground of a specific width even though the power lines are overhead.

Mr. Bunker stated that the issue has gone before the Court and the easement was delineated during that process. Subsequently, Mr. Reeder received a Notice of Removal with a time frame listed. Council member Pearson stated Southfield Road was a county road beforehand, and the Town now protects their easement 15 feet from the center of the road on each side. He said when a trench is dug for placement of a utility line, there must be an engineer on site observing distances between lines, making sure the backfill is proper, etc.

Council member Pearson said Mr. Reeder chose to go to court, to dispute this in court. Mr. Reeder replied yes, he did, but he was disappointed in the fact that he and Karen did not have the opportunity to speak at all during the proceedings. He said there were four attorneys present discussing the matter, but the Reederes were not allowed to say anything.

Mayor Kohler stated the Court made a determination that the fence was in the right-of-way, and Mr. Reeder disagreed with that statement. He said the only determination by the Court was that there was an easement; that there was nothing said about the trees, only that a right-of-way existed.

Mayor Kohler asked Mr. Reeder if the Court determined that the fence needed to be moved, and he said yes. Mayor Kohler said Mr. Reeder was asking for a little more time to do so because it is winter. Mr. Reeder stated he is going to move the fence, but he wants cooperation from the Town with respect to the utility lines in the easement.

Mayor Kohler asked Ryan Taylor and Planning Director Bunker to explain where things are right now with respect to the Court case. Mr. Bunker stated the Reederes had a survey done, and stakes were placed showing where the right-of-way is; that the Town did not dispute the survey. Then the Reederes filed suit and the parties went through the court action. The right-of-way was determined to exist prior to when the property was owned by the Wildes. The end result of the lawsuit was the Notice of Removal pertaining to the fence and the trees in the right-of-way.

Ryan Taylor stated the Town right-of-way here is 60' and not 50', 30' each direction from the centerline. He agrees the utilities are very tight, but they were placed in the trench in an acceptable fashion.

Mayor Kohler asked Mr. Reeder if what he is seeking from the Town at this time is to be granted more time in order to move the fence. Mr. Reeder said he's asking for two things. He needs help in removing the willow tree, for one thing. Mr. Bunker stated one reason they need trees like the spruces removed is because the roots will find water, even condensation off the waterline, and wrap around the line and cause damage; that there is no deep-rooted vegetation allowed in the rights-of-way.

The second thing Mr. Reeder wants is to have the Town look at the water-line in the ground and if it is installed improperly, to dig it up and have it put in the right place. He suggested having Blue Stakes come and measure the depth and location of the utility lines to see their proximity to each other. Council member Blotter questioned whether Blue Staking the area would be accurate enough to pinpoint the locations and depths of the lines, and further suggested that Mr. Reeder do that on his own without Town participation.

Mayor Kohler asked if it was time for a motion. Council member Duggin said the Daniel code states there would not be a decision tonight; that a decision will be made in no less than five days and no more than 10 days. The answer will be submitted to the Reeder in written form.

8) INFORMAL HEARING REQUESTED BY CHARCHENKOS

Jeremy and Erin Charchenko introduced themselves and stated they were asked by the Town to appear in regards to a Notice of Nuisance and Order to Cease and Desist. They live at 3400 South Big Hollow Road. The Cease and Desist order pertains to a shed that they are building. The Charchenkos were presented with materials just prior to the meeting, and Mr. Charchenko invited the Town to open the discussion as he hadn't had time to review the documentation.

Mayor Kohler asked the Charchenkos what was included when they were given the notice. Mrs. Charchenko stated they were out of town at the time and received a three-page email. The letter was dated November 22nd and was postmarked November 29th. Because the letter gave them 10 days in which to act on the notice, she wonders why it took 10 days to get it in the mail. She stated they received it in their mailbox on December 4th.

Mr. Charchenko said the letter stated Exhibits B and C were included, but they were not with the letter. He stated he had asked on numerous occasions to be provided the evidence the Town was relying on in making the accusations, but was given nothing until this hearing date. Mrs. Charchenko

added the letter stated they were constructing an accessory building without a permit in a floodplain area, and that was all.

Mr. Charchenko stated he is working with Ryan Taylor to get a permit now. He would rather have had more of a conversation with Town representatives at the time they told him he was out of compliance with code, rather than being threatened with jail time and fines. He asked Mr. Bunker if he had come onto the Charchenko property in order to obtain information regarding size and use of the accessory building. Mr. Bunker said he did not come onto the property. He counted the trusses in the unfinished roof from a distance.

Mr. Charchenko said he is working with Mr. Taylor to come into compliance. He asked that the Town strike a balance with residents in open conversation and not make the situation so controversial.

Council member Pearson asked Mr. Taylor if the building in question is in the floodplain. His response was yes. Council member Pearson asked if a building can be constructed in the floodplain; and if so, how. Mr. Taylor explained the easiest way is to bring in enough fill material so that the finished elevation is above the floodplain. He explained there is an approval process to meet FEMA requirements, and he stated Mr. Charchenko is working through that at this time. Mrs. Charchenko inquired if he was speaking only of damage to the building. Mr. Taylor stated that is one concern, and the second is damage caused downstream or the structure itself washing downstream in a flood situation. In response to further questioning, Mr. Taylor stated the plans that have been submitted show no plumbing but does show power to be installed.

Council member Pearson stated FEMA discourages building in a floodplain. If a flood were to occur, many times FEMA has to come in and pick up the pieces of destroyed structures left behind. FEMA is known to aid communities after a flood by repairing roads, bridges, and other structures, but frowns upon homeowners building within the floodplain and are not quick to reimburse costs incurred.

Mr. Charchenko noted in his research he has found FEMA does allow building in a floodplain as long as the structure has been engineered correctly. Mr. Taylor agreed, but the burden is on the Town to prove they followed FEMA guidelines and that any structures built within the floodplain can be insured appropriately. If all the requirements of Daniel Town and FEMA are met by the Charchenkos, a permit could be issued by the Town. Mr. Taylor will be working with the State Floodplain Coordinator. As an aside, while reviewing this permitting process, Mr. Taylor advised it is time to look at Daniel's floodplain

Ordinance and update it, if necessary.

Mr. Charchenko asked if, since they are working through the permitting process, the stop work order can be lifted. Once everything is approved with the Town and FEMA, can the construction move forward.

Council member Blotter stated his opinion that that decision is not one for the Council to make, but cautions against any work being done until the approvals have been given.

Planning Director Bunker pointed out other violations listed in his Stop Work Order letter, one of which was people living in trailers and outbuildings on the property. Mrs. Charchenko stated no one had ever lived in an outbuilding, and that the people staying in trailers had all moved out.

Council member Pearson asked Mr. Bunker if there are any other issues on the subject property. Director Bunker stated there are more issues, but they are not contained in the letter. As far as the Stop Work Order goes, Director Bunker stated there was work performed after he issued the letter. The Charchenkos denied that allegation, stating the date they got the letter was December 4th and that nothing was done after that time.

Planning Director Bunker stated once a permit is issued, he would allow construction of the building to continue.

Mrs. Charchenko stated she would like clarification on what the Nuisance Inspector is allowed to do within the Town, as she feels Director Bunker possibly violated their Fourth Amendment rights in the event he came onto their property. Council member Blotter said Mr. Bunker has been the Nuisance Inspector for Daniel for a long time and does a good job in performing those duties. Council member Blotter went on to say people need to understand the ramifications that could occur if they do not correct violations noted. Mr. Bunker is following the law in citing these violations. Mrs. Charchenko said she was informed of two separate occasions where Mr. Bunker had discussion with individuals stating they needed to take measures to avoid citations, but that Mr. Bunker did not give them that opportunity. He merely issued the Stop Work Order.

Council member Duggin stated there is contention in this situation and that communication between the parties could have been better, but that the Nuisance Inspector's actions are complaint driven. She asked that in the future, if a resident wants to discuss an issue on their property, to call the mayor or a council member to discuss it. She does appreciate the Charchenkos' efforts now to come into compliance on the permitting issue.

Mayor Kohler said the Council will discuss this issue and get back to the Charchenkos with a written response.

9) COUNCIL REPORTS/UPDATES

Council member Duggin reported the CDBG application has been submitted in a timely manner. She reported that the February interlocal meeting had been cancelled. She mentioned she was in the office when the new circuit rider for the Rural Water Association happened to drop by, Mike Davis, and Mike Duggin was going to take him to the well house and show him the Town's water system so that he is familiar with it. Mr. Davis said he is happy to help Daniel Town with their needs on their water systems.

Mayor Kohler stated he had received a call from Ryan Taylor as a result of a communication to him, and said he did not and would not send an email requesting funding of gift cards.

Planning Director Bunker then presented his monthly planning report. He said he has received the latest Disaster Mitigation Plan from Mountainland Association of Governments, which will be reviewed by the Planning Commission and a recommendation sent from them to the Council in the next couple of months. The plan must be adopted by sometime in April.

Mr. Bunker stated Scott Keele had purchased Jeremy Keele's home on Daniels Road, and it is in the permitting process. On the Haroldsen zone change application, Mr. Bunker said the deed had been recorded with the county, which started the 60-day timeline for Mr. Haroldsen to complete the items agreed upon and the Town to then rezone the property. Ryan Taylor stated he is in regular contact with Mr. Haroldsen and will work with him toward getting the rezoning requirements completed and the property rezoned.

10) DANIEL MUNICIPAL WATER

Planning Director Bunker reported there are now 50 meters on the DMW system that are not giving reads. These are meters out of warranty and the batteries are failing. The Council will have to make a decision about what company the Town wants to use and get replacement meters. Ryan Taylor was asked to give a presentation on water meters in the next meeting. Charli Brown mentioned she had been searching for an irrigation meter last summer and had to wait months to get one, so the Town could run into an issue on availability of

replacements. Mr. Bunker also said there had been two freeze-ups on meters as the warmer weather comes and the ground begins to get frost.

11) STORM HAVEN WATER

Mr. Bunker reported the additional testing for lead and copper in the Storm Haven system is ongoing. Several residents are getting tested monthly, as well as the source at the well.

Council member Duggin referred back to the planner report and asked about a line item "Storm Haven water – Loan Status," wondering what that is. Ryan Taylor explained about a year ago Daniel had received a \$6 million loan/grant, a 30% loan, and the Division of Drinking Water was asking if Daniel wanted to move forward with it. Its intent was to add a water tank at Storm Haven and combine the two water systems, Storm Haven and DMW. He will report on this in detail at the March 7th meeting. Council member Pearson asked to include the scope of the loan and what it means for individuals paying for water monthly, and whether or not it would solve long-range problems.

12) RECORDER'S OFFICE: WARRANTS, Q2 BUDGET UPDATE, ANNOUNCEMENTS

Clerk Lynne Shindurling reviewed in detail the invoices submitted to the Town during January. On the T-O invoices Council member Pearson asked what the engineering firm was doing on CDBG. Council member Duggin explained that because the Daniel Town clerk was not working on the application for CDBG, T-O was handling the application process. The remainder of the warrants were discussed. On the water warrants the clerk reported the employee pay for meter reads had been recorded under the public works category since July 1, 2021, and she was moving it back to the water fund for the second half of the fiscal year. In reference to Mr. Bunker's work for the water system, the clerk asked to add a \$125 conference fee for an online course Mr. Bunker took regarding cross-connections.

Council member Duggin moved to approve the January warrants of 2022 as listed with the addition of an additional \$125 charge. The motion was seconded by Council member Blotter. The vote was: Duggin aye, Blotter aye, Mayor Kohler aye, Pearson aye. The motion carried.

Next Council member Duggin presented the budget update for the second quarter of 2022. Revenues seemed to be in line, except she is concerned about the amount of the telecom tax received and wants to do some research there. The CARES funds were noted, and Ms. Duggin commented that the fund is now called the American Rescue Act as the next stimulus program. On expenditures she noted advertising, office rental, and IT services will need an adjustment on a budget amendment. She stated the amount listed for Public Works repairs of just over \$35,000 should actually be moved to Road Projects, which is still over the amount budgeted and will require an adjustment in the future.

On the Water fund the bond payments have not been listed. She and Treasurer Sherri Price will look into Mr. Probst's statement of a \$109,000 over-payment, reassuring the public it was not a matter of spending funds we didn't have. The up-to-date PTIF statements were provided to the Council. These are Public Treasurers' Investment Funds controlled by the Utah State Auditor. Daniel Town has a total of five PTIF accounts.

13) POSSIBLE CLOSE SESSION AS PERMITTED BY UCA 52-4-205

Council member Duggin moved to go into closed session to discuss pending or possible litigation. The motion was seconded by Council member Blotter and passed with all "aye" votes.

The closed session began at 8:35 PM. Those present were Mayor Kohler, Council members Duggin, Blotter, and Pearson, and clerk Lynne Shindurling.

At 9:28 Council member Duggin moved to come out of closed session and go back into regular session. The motion was seconded by Council member Blotter and passed with all "aye" votes.

14) ADJOURN

Council member Blotter moved to adjourn the meeting, seconded by Council member Duggin. The motion passed with all "aye" votes. The meeting was adjourned at 9:30 PM.

Lynne Shindurling
Clerk/Recorder